

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Carlmais Johnson	Team: Squad #16	CCRB Case #: 201509267	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 10/20/2015 8:43 PM	Location of Incident: East 111th Street Bridge and the FDR Drive	Precinct: 23	18 Mo. SOL 4/20/2017	EO SOL 4/20/2017	
Date/Time CV Reported Thu, 10/29/2015 3:13 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 10/29/2015 3:13 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. POM Jonathan Perez	17154	951041	023 PCT
3. POM Andres Guzman	9580	954905	HBM IRT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Karina Puga	20607	954247	023 PCT
2. POM Trevor Bernard	13812	934486	023 PCT
3. POM Julio Silva	25669	923180	023 PCT
4. SGT Edwin Jerez	3670	941258	023 PCT
5. SGT Waqar Ali	4552	944970	023 PCT
6. POM Jorge Bedoya	03394	941403	C R C

Officer(s)	Allegation	Investigator Recommendation
A.POM Jonathan Perez	Abuse: PO Jonathan Perez stopped § 87(2)(b) and § 87(2)(b)	
B.POM Andres Guzman	Abuse: PO Andres Guzman stopped § 87(2)(b) and § 87(2)(b)	
C. Officers	Abuse: Officers stopped § 87(2)(b) and § 87(2)(b)	
D.POM Jonathan Perez	Force: Police Officer Jonathan Perez pointed his gun at § 87(2)(b) and § 87(2)(b)	
E. Officers	Force: Officers pointed their guns at § 87(2)(b) and § 87(2)(b)	
F. Officers	Force: Officers used physical force against § 87(2)(b), § 87(2)(b) and § 87(2)(b)	
G. Officers	Discourtesy: Officers spoke discourteously to § 87(2)(b) and § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
H. Officers	Abuse: Officers searched § 87(2)(b) and § 87(2)(b)	
I.POM Jonathan Perez	Abuse: Police Officer Jonathan Perez searched § 87(2)(b)	
J.POM Jonathan Perez	Abuse: Police Officer Jonathan Perez damaged § 87(2)(b)'s property.	
K. Officers	Abuse: Officers detained § 87(2)(b) and § 87(2)(b)	

Case Summary

§ 87(2)(b) filed this complaint with the CCRB via the online website on October 29, 2015 (Board Review 01). § 87(2)(b) was not a witness to the incident.

On the evening of October 20, 2015, police in the 23rd Precinct received three reports regarding firearms. The first report was in regards to multiple shots fired at East 102nd Street and First Avenue to the FDR Drive in Manhattan. A suspect from this interaction fled on the FDR East River Promenade. While fleeing, the suspect stole a bicycle at gunpoint in the vicinity of East 111th Street and the FDR Drive; as a result, officers transmitted a radio report regarding the robbery. The third report was in regards to a shooting at East 120th Street and the FDR Drive where Police Officer Eric Holder was fatally shot. (A map of the incident location is available in Board Review 26.)

At approximately 8:43 p.m., § 87(2)(b), § 87(2)(b), § 87(2)(b) and § 87(2)(b) were walking in the vicinity of East 111th Street Bridge and FDR Drive in Manhattan immediately prior to the report of the fatal shooting. The following allegations were alleged:

Police Officer Jonathan Perez of the 23rd Precinct, Officer Andres Guzman of Housing Borough Manhattan IRT, and an unidentified officer stopped § 87(2)(b) and § 87(2)(b) (**Allegation A, Allegation B, and Allegation C**) by pointing his gun at them (**Allegation D and Allegation E**). Officers pushed § 87(2)(b) and § 87(2)(b) to the ground when they asked the officers why they were being stopped (**Allegation F**), and cursed at them, calling them “stupid motherfuckers” (**Allegation G**). Officers searched § 87(2)(b) and § 87(2)(b) (**Allegation H**). Officer Perez searched § 87(2)(b) (**Allegation I**). As a result of the search, a pocketknife was recovered from § 87(2)(b). Officer Guzman removed and discarded the knife by throwing it into the river (**Allegation J**). § 87(2)(b) and § 87(2)(b) were ultimately detained and taken to the 23rd Precinct stationhouse (**Allegation K**), though they were ultimately released without summons or arrest.

None of the victims in this complaint were arrested or issued any summonses as a result of this incident.

This case was originally assigned to Investigator Amanda Harouche; it was reassigned to Investigator Carlmais Johnson on February 25, 2016 upon the resignation of Investigator Harouche.

Mediation, Civil and Criminal Histories

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
- As of May 4, 2016, no Notice of Claim has been filed with the Comptroller’s Office.

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (Board Review 14).
- This is the first CCRB complaint to which § 87(2)(b) or § 87(2)(b) have been a party (Board Review 15, Board Review 16, Board Review 17, and Board Review 18).
- Officer Jonathan Perez has been a member of the NYPD for four years and this is his first CCRB complaint.
- Officer Andres Guzman has been a member of the NYPD for two years and this is his first CCRB complaint.

Potential Issues

- Due to the nature of the incident, specifically that there was a reported shooting followed by a gun-point robbery and the fatal shooting of a police officer, numerous officers from varying commands responded to the location. According to radio communications, officers and supervisors from the 23rd Precinct, the 23rd Precinct Detective Squad, PSA 7, the 19th Precinct, the 19th Precinct Anti-Crime Unit, and Manhattan Gang, responded to the location, and these officers played varying roles during the incident that were not formally documented.

Findings and Recommendations

Explanation of Subject Officer Identification

- Neither § 87(2)(b) nor § 87(2)(b) who provided detailed sworn statements, was able to describe the officers who stopped them (Allegation A, Allegation B, and Allegation C) with their guns pointed (Allegation D and Allegation E), pushed them to the ground (Allegation F) and spoke discourteously to them (Allegation G). § 87(2)(b) who only provided a brief telephone statement, could only provide a vague description of one of the officers. Officer Perez, who admitted that he approached the group with his gun pointed, stated that he approached alone without other officers, and that he was later joined by approximately eight officers from unknown commands. Officer Guzman, the only officer to admit being present in the vicinity, denied that he ever approached the group or had his gun drawn or pointed.

§ 87(2)(g)

- § 87(2)(b) alleged that the officer who threw his knife into the river was the officer who searched him. § 87(2)(g)

Allegation A –Abuse of Authority: Police Officer Jonathan Perez stopped § 87(2)(b)

and § 87(2)(b)

Allegation B –Abuse of Authority: Police Officer Andres Guzman stopped § 87(2)(b)

and § 87(2)(b)

Allegation C – Abuse of Authority: Officers stopped § 87(2)(b)

and § 87(2)(b)

It is undisputed that Officer Perez stopped § 87(2)(b)

and § 87(2)(b) § 87(2)(g)

In his CCRB statement, Officer Perez explained that he had been at the 23rd Precinct stationhouse processing an arrest, he left the stationhouse to conduct a canvass when he received the first report that shots had been fired by an unknown number of perpetrators at East 102nd Street (Board Review 20). He started to canvass for the perpetrators at East 106th Street, but went to East 111th Street when he heard that a perpetrator of the shots fired call was heading north on the FDR Drive. When he arrived at East 111th Street, Officer Andre Guzman, and an unidentified officer were already present. Together, Officer Perez, Officer Guzman, and the unidentified officer approached an unidentified male who reported to them that he had been robbed at gunpoint for his bicycle by a male. Via radio, Officer Guzman transmitted the description of the perpetrator of the robbery and information that he might be fleeing on a bicycle. At the same time, Officer Perez observed § 87(2)(b) and § 87(2)(b) walking northbound on the promenade side of the FDR by East 113th or 114th Streets. One of the males continually looked back, drawing Officer Perez’s attention to the group.

Approximately one minute after transmitting the information about the perpetrator fleeing on bicycle, as Officer Perez and Officer Guzman were still speaking with the victim whose bicycle had been stolen, they received a radio transmission indicating that an officer, later identified as Officer Holder, had been shot. The noise of the gunshots were in the background of the radio transmission. Officer Perez said that the first transmissions indicated that the shooting had occurred at East 112th Street. Because of Officer Perez’s location and the fact that he had only heard the gunshots via the radio, he ultimately determined that the shooting could not have occurred at East 112th Street and FDR Drive. Later transmissions clarified that the shooting had actually occurred on East 120th Street.

Officer Perez observed that at this point, the group of males had changed direction and had begun to walk briskly/slowly jog southbound on the FDR Drive. When Officer Perez saw this, he ran to the promenade side of FDR Drive towards § 87(2)(b) and § 87(2)(b). Officer Perez noted that the group had also started to run after the shooting had come over the radio. Officer Perez then stopped § 87(2)(b) and § 87(2)(b) as gunpoint (as discussed below in Allegation D and Allegation E) to determine whether they had been involved in the initial report of shots fired or the third report of the police shooting. He explained that he knew that they were not involved in the incident regarding the stolen bicycle, because he knew that only one person was involved in that incident.

Officer Perez’s account conforms to the account provided by § 87(2)(b) who said that he, § 87(2)(b) and § 87(2)(b) were walking northbound on the FDR Drive at East 112th and 113th Streets when they first observed police activity (Board Review 11). One

officer appeared to be looking into the water with binoculars, and two other officers ran past the group, heading north. § 87(2)(b) yelled out and asked the officers if everything was okay, and one of the officers directed the group to go in the opposite direction, which they did. In his statement to the CCRB, § 87(2)(b) indicated that while the officers did not respond, the group nonetheless decided to leave, and began to walk south (Board Review 13).

Further, Officer Perez was not the only officer who believed that the group was connected with the shooting that occurred at East 102nd Street. Radio communications indicate that officers from Sector G of the 23rd Precinct transmitted a report that there was a group of four males walking north on the FDR Drive between East 111th and East 114th Streets (Board Review 33-38). Police Officer Trevor Bernard, who was assigned to patrol this sector, informed the CCRB that he provided a radio description of this group because one of the males was wearing a gray sweater or something with the color gray that fit the transmitted description of one of the shooters (Board Review 19).

In *People v. DeBour*, 40 N.Y.2d 210 (1976), the Court of Appeals held that an officer may conduct a stop when he has reasonable suspicion that an individual has or is about to commit a crime (Board Review 02). In *People v. Hines*, 46 A.D.3d 912 (2007), the courts held that the police have reasonable suspicion to pursue, stop, and detain a defendant if they have general description of the perpetrator that matches the description of the defendant, there is a close proximity of the defendant to the site of the crime, and a short passage of time between the commission of the crime and the observation of the defendant (Board Review 25).

§ 87(2)(g)

§ 87(2)(g)

Allegation D - Force: Police Officer Jonathan Perez pointed his gun at § 87(2)(b)

and § 87(2)(b)

It is undisputed that Officer Perez approached § 87(2)(b) and § 87(2)(b) with his gun pointed at them § 87(2)(g)

Officer Perez stated that when he approached § 87(2)(b) and § 87(2)(b) he did so believing that they may have been involved with one or more reported shootings, one of which was the shooting of a police officer (Board Review 20). He explained that he drew his weapon as he approached in order to get them to immediately comply with his orders to get to the ground. He held § 87(2)(b) and § 87(2)(b) at gun point until other officers arrived and placed them in handcuffs.

According to *Police Department v. Gliner*, OATH Index No. 955/00 (Sept. 6, 2000), indicates that it is permissible under Departmental guideline to draw and point a firearm as long as the officer has a reasonable fear for his own or another's personal safety (Board Review 03).

§ 87(2)(g)

Allegation E - Force: Officers pointed their guns at § 87(2)(b)

and § 87(2)(b)

§ 87(2)(g)

As discussed above, neither § 87(2)(b) or § 87(2)(b) all of whom made the allegation that multiple officers pointed their guns, provided descriptions of the subject officers (Board Review 10, Board Review 11, Board Review 11, Board Review 12, Board Review 13). Officer Perez, who admitted that he approached the group at gunpoint, said that he

did so alone (Board Review 20). Officer Guzman, who Officer Perez indicated was with him when the group was stopped, indicated that he did not have an interaction with the males (Board Review 22).

§ 87(2)(g)

Allegation F – Force: Officers used physical force against § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) stated that when the officers directed them at gunpoint to get to their knees, they complied (Board Review 10, Board Review 11, Board Review 12, Board Review 13). However, the officers then went behind the males and pushed them forwards so that they were on the ground. § 87(2)(g)

§ 87(2)(b) who indicated that he was on his knees at the time, stated that an officer pushed his back with two hands so that his body slammed to the ground. When § 87(2)(b) saw this, he got up from the ground and asked the officers what they were doing. As a result, another officer pushed § 87(2)(b) to the ground in a similar manner. § 87(2)(b) saw that when § 87(2)(b) rose from the ground to protest the officer's treatment of § 87(2)(b) he, too, was pushed to the ground.

§ 87(2)(b) stated that he observed officers with their knees on the backs of § 87(2)(b) and § 87(2)(b). § 87(2)(b) stated that although no officer placed their knee in his back, he conceded that he moved his body in discomfort as he was being handcuffed and was told to stop moving.

§ 87(2)(b) who only provided a brief telephone statement, stated that he was pushed to the ground, causing him to sustain an unspecified injury to his chin. However, he made no mention that officers pushed any of the other males.

§ 87(2)(g) Officer Perez stated that when he approached at gunpoint, the males got to the ground of their own volition (Board 20). He did not recall whether they went to their knees before lying on the ground, but he stated that he did not recall that any officer pushed the stopped males.

§ 87(2)(g)

Allegation G – Discourtesy: Officers spoke discourteously to § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) alleged that as the officers used physical force to push him and his friends to the ground, they said, "You stupid motherfuckers" and used other unspecified statements with the

word “Motherfuckers” (Board Review 11). § 87(2)(b) also alleged that at one point, a boat came near to the area whether there were. An officer rose from searching § 87(2)(b) and began yelling at the boat to keep going. The officer yelled, “Fuck!” when the boat stopped, and then “Not here. Not here. Keep going!” As discussed above, he was not able to describe the three officers who allegedly made these statements.

§ 87(2)(b) who did not provide a sworn statement, claimed that an officer yelled, “Get down! Shut up. Shut up. Shut the fuck up!” (Board Review 17). § 87(2)(b) stated that he did not hear any officer use profanity when he and his friends were on the ground (Board Review 18).

As discussed above, Officer Perez was the only officer identified by the investigation who admitted his involvement in the stop of the males (Board Review 20). While he affirmed that he may have said the word “Fuck” after he learned that an officer had been shot, he denied making the alleged mentioned discourteous statements, using discourteous language when speaking in the vicinity of the stopped males, or hearing an officer make the alleged statements.

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g).

Allegation H – Abuse of Authority: Officers searched § 87(2)(b) and § 87(2)(b)
§ 87(2)(b) alleged that he was searched by one of the three officers who initially stopped him, but he was unable to identify the subject of this complaint aside from noting that the officer was dressed in uniform (Board Review 11).

§ 87(2)(b) alleged that he observed officers that he could not describe place their hands inside the pockets of § 87(2)(b) and § 87(2)(b) (Board Review 13). § 87(2)(b) did not provide a statement to the CCRB, § 87(2)(b) provided a brief telephone statement that made no mention of a search (Board 12), and § 87(2)(b) did not see whether any other members of the group was searched. § 87(2)(b) was unable to describe the officers that performed this alleged action beyond noting, as above, that they officer was dressed in uniform.

Officer Perez is the sole officer who confirmed that he initiated the stop of the group, however, he denied that he conducted a search of any of the stopped individuals (Board Review 20). § 87(2)(g)

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g).

Allegation I – Abuse of Authority: Police Officer Jonathan Perez searched § 87(2)(b)

§ 87(2)(b) alleged that he was searched by Officer Perez (Board Review 13). However, in his testimony to the CCRB, he admitted that when Officer Perez asked him if he had anything on him, he responded that he had a pocket knife inside of his jacket. Officer Perez removed a cell

phone from the front right jacket pocket, his wallet from his left front pants pocket, and a pocket knife from his jacket.

§ 87(2)(b) indicated that he did not see whether officers searched his friends, but he did indicate that he heard an officer ask, “Do you have anything on you?” § 87(2)(b) who did not provide a detailed sworn statement, made no mention that officers searched any in their group. § 87(2)(b) provided no statement in connection with this case.

In his statement to the CCRB, Officer Perez initially stated that once the males were in police custody and handcuffed, they were frisked and searched (Board Review 20). Later in the same statement, he said that he only observed the males being frisked, and denied having conducted any searches. Although Officer Perez was later in possession of a knife recovered from § 87(2)(b)

§ 87(2)(b) he could not say how he obtained the knife. § 87(2)(g)

According to *People v. DeBour*, the Court of Appeals has held that officers are permitted to conduct frisks when they have reasonable suspicion to believe that they are in possession of a weapon. § 87(2)(g)

§ 87(2)(g)

Allegation J – Abuse of Authority: Police Officer Jonathan Perez damaged § 87(2)(b)s property.

All parties agree that after a knife was recovered from § 87(2)(b) Officer Perez threw the knife into the river.

§ 87(2)(b) said that when Officer Perez asked whether he had any contraband in his possession, he admitted that he had a pocketknife inside of his jacket (Board Review 17). Officer Perez then recovered the knife, told him that he should not be carrying a knife because it was dangerous, and threw the knife into the river.

Officer Perez likewise confirmed that a knife was recovered from one of the four males, and said that he tested the knife and determined that it was a gravity knife. Because the males were young, Officer Perez decided to use his discretion to throw away the knife rather than vouching it in connection with an arrest.

Patrol Guide Procedure 207-17 regarding the recording of contraband weapon seizures, directs officers to follow normal complaint and/or arrest procedures when an unlawfully possessed weapon is recovered, which includes the vouching of evidence (Board Review 04).

§ 87(2)(g)

§ 87(2)(g)

Allegation K – Abuse of Authority: Officers detained § 87(2)(b)

and § 87(2)(b)

All parties agree that after they were stopped and handcuffed at East 111th Street and the FDR Drive, § 87(2)(b) and § 87(2)(b) were taken back to the 23rd Precinct stationhouse. According to the 23rd Precinct Command Log, the group was held in the stationhouse from approximately 9:00 p.m. to 4:20 a.m., during which time, they were questioned by officers from the 23rd Precinct Detective Squad.

Officer Perez stated that although he stopped the males, he left the scene and returned to the 23rd Precinct with the victim of the gunpoint robbery (Board Review 20). He stated that he left East 111th Street before the males were transported from the location. Officer Perez stated that he did not know the identities of the officers who transported the males from the location or why. Officer Perez stated that while he was en route to the stationhouse, he heard a radio transmission from an unidentified supervisor indicating that the males should be brought back to the stationhouse.

Sergeant Waqar Ali stated that while he and his partner were en route the site of the fatal shooting, he observed a few plainclothes and uniformed officers in the vicinity of East 111th Street and FDR Drive. They stopped because there had been confusion about the exact location of the final shooting. Sergeant Ali said that he could recall whether these officers were from his command, and that he could not identify any of the officers present. With the officers were three to four individuals who had been handcuffed. The males, he said, had been stopped in regards to the first shooting that occurred on East 102nd Street. Although he recalled that the description of the perpetrator for the first shooting incident was that of a light-skinned Hispanic male, he could not say whether any of the stopped individuals matched this description because he did not look at them for very long as he was concentrated on getting to where the officer had been shot. Sergeant Ali said that he was not provided with any details about how the four males came to be stopped. Instead he asked, “Are these people the ones that we have been looking for?” In return, an officer replied, “Possibly.” Sergeant Ali then asked where the officer who was shot was located, and an officer informed him that the injured officer was at East 120th Street and FDR Drive. Sergeant Ali stated that he and his partner then left the location, after being on scene for less than one minute. Sergeant Ali stated that he did not give any officers instructions to take the males back to the stationhouse, and specifically told the investigation that he did not do anything while at that location.

The 23rd Precinct Command Log has entries for § 87(2)(b) and § 87(2)(b) though it does not indicate which officers brought them to the stationhouse or would otherwise be considered the arresting officer, or why they were brought to the stationhouse (Board Review 06). In the section of the Command Log entries for the supervisor verifying the

arrest is the name of Sergeant Waqar Ali. However, this entry was created by Sergeant Jerez, and Sergeant Ali denied that he verified the detention of the males (Board Review 27). Sergeant Ali further denied discussing the males, including with the 23rd Precinct desk officer, until he returned to the stationhouse at approximately 2:30 to 3:00 a.m.

Sergeant Jerez, who worked as the 23rd Precinct desk officer at the time of incident, affirmed that he entered the males' information into the Command Log when they arrived (Board Review 23, Board Review 24). He explained that the males had been brought to the stationhouse for an investigation into the shooting of Officer Holder because they were either at the scene or close to the location where the shooting occurred. Sergeant Jerez had not received any calls regarding the four males prior to their arrival at the stationhouse and did not know which officers made the decision to have the males brought to the stationhouse. He admitted that he entered Sergeant Ali's name into the Command Log, but explained that he did so because he assumed that Sergeant Ali, being the precinct's only patrol supervisor for the night, had made the decision for them to be returned to the stationhouse. At some point, the males were interviewed by detectives from the 23rd Precinct Detective Squad before being released to their parents at approximately 4:20 a.m., though Sergeant Jerez could not explain why there was such a delay in processing the individuals. Sergeant Jerez could not identify the officers that brought the males to the stationhouse aside from Officer Perez.

While Sergeant Waqar Ali affirmed that he went to East 111th Street and the FDR Drive while the group was being held, he stated that he was at the location for less than a minute, and did not have a discussion about why the males had been stopped because his sole focus was reaching the officer who had been shot (Board Review 27). Sergeant Ali stated that his only question regarding the males was whether any of them were the perpetrator of the fatal shooting and indicated that he was never informed of why they had been stopped. He denied that he issued any instructions for the males to be returned to the stationhouse.

The 23rd Precinct Prisoner Holding Pen Roster contains notations regarding the detention of the males at the stationhouse. However, in the space where the arresting officer is normally noted has been left blank (Board Review 05).

Radio communications contain only one notation regarding the four males, the one transmitted by Sector G of the 23rd Precinct. In his statement to the CCRB, Officer Perez stated that he made a radio transmission to indicate that he had stopped four males. He also stated that as he was on his way back to the stationhouse with the gunpoint robbery victim, he heard an unidentified supervisor direct officers to bring the males to the stationhouse. However, the remaining communications are limited to identifying and locating the perpetrator of the fatal shooting (Board Review 33-38). There were no subsequent transmissions regarding what should be done with § 87(2)(b) or § 87(2)(b)

§ 87(2)(g)

§ 87(2)(g) [Redacted]
[Redacted]

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]

Squad:

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date